

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCLC NO 3 OF 2024

NAKURU WAR MEMORIAL HOSPITAL LIMITED.....PLAINTIFF

VERSUS

THE COUNTY GOVERNMENT OF NAKURU.....1ST DEFENDANT

LAND REGISTRAR NAKURU.....2ND

DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING:

This suit was filed on 30/12/2023 by Nakuru War Memorial Hospital Limited against the County Government of Nakuru, Land Registrar Nakuru and the Honourable Attorney General. It seeks:

- a. An Order of permanent injunction restraining the Defendants, their employees, servants and/or agents from further dealing, entering, remaining and carrying out all other unauthorized activities on the Plaintiff's land known as NAKURU MUNICIPALITY BLOCK II/107 measuring 11.25 Hectares and specifically the hospital facility known as Nakuru War Memorial Hospital.**
- b. An Order declaring the Plaintiff as the legal bona fide and rightful proprietor of all that parcel of land known**

as NAKURU MUNICIPALITY BLOCK 11/107 measuring approximately 11.25 Hectares.

c. Costs of the suit

d. Interest on (c) above.

e. Any other Orders that this Honourable Court may deem fit and necessary.

On 26/3/2025, the 1st Defendant filed a Statement of Defence and Counter-claim with the following prayers.

A. THAT this Honourable Court be pleased to cancel the impugned Certificate of Lease issued on the 7th April. 2021 on account of irregular and/or unprocedural issuance.

B. THAT this Honourable Court be pleased to direct the 2nd Defendant to cancel the corresponding entry of the lease in the register.

The case was first filed in Nakuru ELC Court before it was transferred to this Court. While in Nakuru, the matter came up in Court severally. On 31/10/2023 *ex-parte* orders were granted in an Application restraining the Defendants from interfering with or carrying out unauthorized activities on the suit land.

Then the case came up on 2/11/2023, on 6/11/2023, on 7/11/2023, On 20/11/2023, on 23/1/2024, 25/1/2024, 30/1/2024, 1/2/2024, 5/2/2024, 7/2/2024, 8/2/2024, 13/2/2024, 15/2/2024, 20/2/2024, 29/4/2024, 27/5/2024, 19/6/2024, 25/7/2024, 29/7/2024. On

16/10/2024, 24/10/2024, 29/1/2025, 26/3/2025, 27/3/2025, 24/4/2025, 29/4/2025 and 1/7/2025.

On 15/2/2024, an Order was given by the Principal Judge O.A Angote directing that the file be transferred to ELC Nyandarua. And this was complied with. It is on 1/7/2025 that Ms. Misiati, for the 1st Defendant brought to the attention of the Court that the National Land Commission was a party in this suit an Interested Party vide a Counter-claim by the 1st Defendant and that the said Interested Party intended to file a Replying Affidavit. Ms. Misiati told the Court that the 1st Defendant had already served the Interested Party with the Counter-claim on 27/3/2025, 3 months earlier. The Court declined to grant the Orders by not allowing the Interested Party to file an Affidavit because of the lapse of time, 3 months. When giving the Ruling, the Court observed that the 1st Defendant ought to have sought Default Judgment against the National Land Commission and that should need arise the National Land Commission can be summoned by the Court. And the Hearing of the case commenced forthwith.

During the next hearing date on 29/7/2025, Ms. Bitok appeared in Court virtually and introduced herself as appearing for the National Land Commission albeit without filing a single Document. She started cross examining the witnesses. She did the same on 23/10/2025 but on 11/11/2025 Ms. Bitok came to Court late in the middle of the Hearing and on 11/12/2025 still appeared and cross-examined the 1st Defendant's witness. And after cross-examining the last Defendant's witness on 22/1/2026 and the case was closed Ms.

Bitok for the Interested Party, National Land Commission made an Application that she be allowed to call a Witness from the Commission.

In response to the same, Ms. Ademeyon for the 2nd and 3rd Defendants said that Ms. Bitok had promised to send her a witness statement from a Land Administrator of the Commission but had not done so. I wonder why the statements had to be sent to Ms. Ademeyon first before being filed in Court.

Ms. Misiati for 1st Defendant supported the Application but Counsel for the Plaintiff, Mr. Kahiga opposed the Application maintaining that a similar Application had been made on 11/12/2025 and rejected by the Court without any Appeal preferred against the Ruling. He further said that the National Land Commission and the Honourable Attorney General filed no single Documents in the case and that the Court was kind enough to allow the N.L.C to participate in the case. Finally, that Ms. Bitok was in the habit of making oral Applications

Under Order 1 Rule 3 of the Civil Procedure Rules, any person may be joined as a Defendant(s) against whom any right to relief in respect of, arising out of the same act or transaction or series of act or transaction is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons, any question of law or fact would arise.

When Plaintiff is in doubt as to whom he is entitled to obtain redress under Order 1 Rule 1, he may join 2 or more Defendants in order

that the question as to which of the Defendants is liable, and to what extent, may be determined as between all parties.

In our case here, the Plaintiff was not in doubt as to who to sue. He went straight for the 1st, 2nd and 3rd Defendants and never sued the National Land Commission and the Defendants never raised a finger. Under Rule 8 (3), any person on whose behalf or for whose benefit a suit is instituted or defended may apply to the Court to be made a party to such suit.

The Intended Party never found it necessary to join the suit under this Rule though she had the same interest as the 2nd and 3rd Defendants. Under Rule 10 (3), the Court may at any stage of the proceedings either upon the Application of either party and on such terms as may appear to the Court just, and that the names of any person who ought to have been joined whether as the Plaintiff or Defendant or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

The Court was never at any stage in these proceedings moved and did not on its own find it necessary to join the National Land Commission as a party in the proceedings.

Order 8 (1) could suffice since the interest of the said 2nd and 3rd Defendants were the same as those of the National Land Commission. And in any case, under Order 1 Rule 14, any Application to add or strike out or substitute a party may be made to the Court at any time before trial by chamber summons or at the

trial of the suit in a summary manner. I must add that the Interested Party is not applying to be made a party. This has already been done when in the 1st Defendant's Counter-claim dated 13/11/2024 but filed in Court on 26/3/2025 and served on her on 27/3/2025, she was named as an Interested Party with the said Defendant seeking for the following prayers against her:

A. This Honourable Court be pleased to cancel the impugned certificate of lease issued on the 7th of April 2021 on account of irregular and/or unprocedural issuance.

B. This Honourable Court be pleased to direct the 2nd Defendant to cancel the corresponding entry of the lease in the register.

C. Costs of this Suit be awarded.

However, more than 3 months after being named and served, the Interested Party had done nothing save asking the Court to be allowed to file a Replying Affidavit. In a suit such as this one and where you are a party even as an Interested Party, you do not file an Affidavit in response to a Plaint. The Counter-claim is substantively a suit on its own and it is considered as a Counter-Plaint for all intents and purposes. And that is why the Application by the Interested Party to file a Replying affidavit made orally in Court on 1/7/2025 was disallowed by the Court. By this time and to be precise by 10th of April, 2025 the Interested Party ought to have entered

appearance followed by filing a Statement of Defence latest on 24/4/2025. There was inertia and indolence on the part of the Interested Party. Now after the close of the case, Ms. Bitok urges the Court that she be allowed to call a Witness from the Interested Party, specifically a Land Administrator of the Commission.

Under Order 2 Rule 13 of the Civil Procedure Rules,

“The Pleadings in a suit shall be closed 14 days after service of the Reply or Defence to Counter-claim, or if neither is served, 14 days after service of the Defence notwithstanding that any Order or request for particulars has been made but not complied with”

Accordingly, and as pointed out earlier, the close of Pleadings herein was on 10/4/2025. Technically, the Interested Party showed disinterest in defending the Counter-claim and cannot be heard to say that she wants to file a Witness Statement after the case has been closed. It is unorthodox, to say the least.

Under Order 10 of the Rules:

“Any person not already a party to the suit who is served with a Defence and Counter-claim MUST appear thereto as if he had been served with a Summons to appear in the suit.

and under Order 11:

“Any person named in a Defence as a party to a Counter-claim made may unless some other or further

Order is made by the Court, deliver a Reply within 15 days after service upon him of the Counter-claim and shall share a copy thereof and all parties to the suit.”

The Interested Party failed to do this, signifying that she did not intend to defend the Counter-claim.

And under Order 7 Rule 17 (3), where a Counter-claim is filed, a Defence thereto shall be subject to the Rules applicable to Defence.

One of the Rules applicable to Defence is Order 7 Rule 1 i.e. that he shall file a Defence to the Counter-claim within 14 days after he has entered appearance in the suit. This was not done by the Interested Party. And where there is no Defence or Appearance, Order 10 Rules 9 - 10 provide that Default Judgment should be entered and the suit set down for Hearing. What then follows is a Judgment. It is therefore too late in the day for the Interested Party to want to do things she ought to have done about a year ago and without seeking leave to file Defence to the 1st Defendant's Counter-claim after the case has been closed. The oral Application made on 22/1/2026 is therefore dismissed with costs as an abuse to the process of the Court.

Ruling Dated and Delivered at Nyandarua this 12th Day of February, 2026.

HON MUGO KAMAU

JUDGE

In the presence of:

Court Assistant - Samson.

For the Plaintiff.....Mr. Kahiga and Mr. Kamau.

For the 1st Defendant.....Ms. Misiati.

For the 2nd and 3rd Defendants.....Ms. Ademeyon.

For the Interested Party.....N/A.